

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 5**  
**77 WEST JACKSON BOULEVARD**  
**CHICAGO, IL 60604-3590**

April 21, 2020

BY E-MAIL ONLY

Mr. Norman W. Bernstein  
N.W. Bernstein & Associates, LLC  
800 Westchester Ave., Suite N319  
Rye Brook, NY 10573

Re: Effort to Resolve Informally a Dispute Regarding EPA's Bill for Third Site Costs for the period November 6, 2016 through November 5, 2017

Dear Mr. Bernstein:

In response to your July 23, 2019 and August 28, 2019 letters, EPA reiterates its request that the Trustees pay the disputed amount of \$14,907.87 under the oversight bill issued on November 27, 2018. The costs at issue are "related to ERH" at the Site, and therefore are "oversight costs" that the Non-Premium Respondents must reimburse under the Third Site AOC, as amended. EPA also asks that the Trustees pay the interest earned on the disputed funds held in escrow.

The Trustees contend that the March 2017 and June 2017 sampling events were routine quarterly monitoring associated with the pump and treat system, so that field oversight costs connected to that sampling are not covered by the AOC. However, those sampling activities had a dual purpose – they were also specifically intended in the Remedial Design to develop a baseline for evaluating impact of the ERH system.

Sections 1.5.2 and 3.7 of the Trustees' ERH Remedial Design state that the March 2017 groundwater monitoring results would be used to provide baseline data important to monitoring the progress and impacts of the ERH system. When the startup of the ERH system was subsequently delayed, the Trustees agreed that the June 2017 groundwater sampling would instead provide the baseline for evaluating ERH impacts (which they confirmed in a September 26, 2017 response to comments). Thus, the field activities by the Corps of Engineers and Tetra Tech to oversee that sampling were directly related to ERH, and are recoverable under the AOC amendment.

In their August 28, 2019 letter, the Trustees also assert that at most only one well location (MW-27) is relevant to the ERH baseline. That assumption is mistaken. The 24 monitoring locations ring the DNAPL containment area where ERH was later applied, so that the sampling results provide a comprehensive baseline to help measure the nature and extent of upgradient and downgradient impacts of the ERH system.

EPA's 2016 Enforcement Action Memorandum approving use of the ERH system affirms that the Third Site cleanup objectives include impeding migration of residual contamination located in and around the ERH area. The Enforcement Action Memorandum also notes concerns about the possibility that an ERH remedy could affect the integrity of the containment wall seals. Information about the actual impacts on contaminant migration would be needed to decide whether a cap or reactive vessel might still be required after ERH treatment, to assure long-term protection of Site groundwater.

Thorough monitoring of potential impacts of the ERH system on groundwater and the surface water it discharges to are directly related to evaluating the impacts and performance of the ERH system. The March 2017 and June 2017 thus fall squarely within the definition of "oversight costs" that the Non-Premium Respondents are obliged to pay.

By no later than May 25, 2020, please submit the Trustees' EFT payment on-line to [www.Pay.gov](http://www.Pay.gov) which accepts debit and credit cards and bank account ACH. On the [www.Pay.gov](http://www.Pay.gov) main page, enter sfo 1.1 in the search field to obtain EPA's Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form with the due date, Site Name, Bill SN2751926S0022, and SSID #05HM. Once the form is completed email an acknowledgement of payment to [CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov).

Please feel free to contact me at [Krueger.Thomas@epa.gov](mailto:Krueger.Thomas@epa.gov) if you have any questions concerning this bill.

Sincerely,

THOMAS  
KRUEGER

Digitally signed by  
THOMAS KRUEGER  
Date: 2020.04.21  
15:11:25 -05'00'

Thomas J. Krueger  
Associate Regional Counsel

cc (by e-mail): Matthew Ohl, EPA  
Bonnie Cosgrove, DOJ  
Peter Racher, Plews Shadley Racher & Braun